



ARKANSAS JUDICIARY

Published on *Arkansas Judiciary* (<https://courts.arkansas.gov>)

Rule 60. Relief From Judgment, Decree Or Order.

(a) **Ninety-Day Limitation.** To correct errors or mistakes or to prevent the miscarriage of justice, the court may modify or vacate a judgment, order or decree on motion of the court or any party, with prior notice to all parties, within ninety days of its having been filed with the clerk.

(b) **Exception; Clerical Errors.** Notwithstanding subdivision (a) of this rule, the court may at any time, with prior notice to all parties, correct clerical mistakes in judgments, decrees, orders, or other parts of the record and errors therein arising from oversight or omission. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(c) **Grounds for Setting Aside Judgment, Other Than Default Judgment, After Ninety Days.** The court in which a judgment, other than a default judgment [which may be set aside in accordance with Rule 55(c)] has been rendered or order made shall have the power, after the expiration of ninety (90) days of the filing of said judgment with the clerk of the court, to vacate or modify such judgment or order:

(1) By granting a new trial where the grounds therefor were discovered after the expiration of ninety (90) days after the filing of the judgment, or, where the ground is newly discovered evidence which the moving party could not have discovered in time to file a motion under Rule 59(b), upon a motion for new trial filed with the clerk of the court not later than one year after discovery of the grounds or one year after the judgment was filed with the clerk of the court, whichever is the earlier; provided, notice of said motion has been served within the time limitations for filing the motion.

(2) By a new trial granted in proceedings against defendants constructively summoned, and who did not appear, upon a motion filed within two years after the filing of the judgment with the clerk of the court, or within one year after a certified copy of the judgment has been served upon the defendant, whichever shall be the earlier, upon security for costs being given; provided notice of the filing of said motion has been served upon the adverse party within the time limitations for filing the motion.

(3) For misprisions of the clerk.

(4) For misrepresentation or fraud (whether heretofore denominated intrinsic or extrinsic) by an adverse party.

(5) For erroneous proceedings against an infant or person of unsound mind where the condition of such defendant does not appear in the record, nor the error in the proceedings.

(6) For the death of one of the parties before the judgment in the action.

(7) For errors in a judgment shown by an infant within twelve (12) months after reaching the age of eighteen (18) years, upon a showing of cause.

(d) **Valid Defense to Be Shown.** No judgment against a defendant, unless it was rendered before the action stood for trial, shall be set aside under this rule unless the defendant in his

motion asserts a valid defense to the action and, upon hearing, makes a prima facie showing of such defense.

(e) Valid Cause of Action to Be Shown. No judgment, unless it was rendered before the action stood for trial, shall be set aside on the motion of a plaintiff unless the plaintiff makes a prima facie showing of a valid cause of action.

(f) Defendant Constructively Summoned - Restoration of Property. When a judgment is set aside on the motion of a defendant constructively summoned, the court may order the plaintiff in the action to restore to the defendant any money of the defendant paid under the judgment or any property of the defendant obtained by the plaintiff under it and yet remaining in his possession and pay to the defendant the value of any property which may have been taken under an attachment in the action or under the judgment and not restored. The title of purchasers in good faith to any property sold under an attachment or judgment shall not be affected by a new trial under subsection (c)(2) of this rule, except the title of property obtained by the plaintiff and not bought of him in good faith by others.

(g) Exception for Divorce Decrees. No judgment granting a divorce, except as it relates to alimony, shall be set aside under subsection (c)(2) of this rule.

(h) Premature Judgment. Rendering judgment prior to the time fixed for filing an answer shall be deemed a clerical misprision. No misprision of the clerk shall be ground for appeal until relief has been sought in the circuit court and action taken there.

(i) Motion to Vacate or Modify May Be Heard First. The circuit court may first try and decide upon the grounds for vacating or modifying a judgment before trying or deciding the validity of the defense or cause of action.

(j) Injunction Pendente Lite. The party seeking to vacate or modify a judgment may obtain an injunction suspending proceedings, on the whole or in part, upon showing by affidavit or exhibition of the record that it is probable that he is entitled to have such judgment, decree or order vacated or modified; however, such a showing shall not be required if the judgment, decree or order was rendered before the action stood for trial.

(k) Independent Action to Set Aside Judgment - Writs Abolished. A motion under this rule does not affect the finality of a judgment or decree or suspend its operation, except as provided herein. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment who was not actually personally served with process or to set aside a judgment or decree for fraud upon the court. Writs of coram nobis in civil cases, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment or decree shall be by motion as prescribed in these rules or by an independent action.

Reporter's Notes to Rule 60: - 1. This rule is substantially different from FRCP 60. Its purpose is to substantially retain existing Arkansas law on the subject. The Court feels that the adoption of FRCP 60 would detract from the stability of final judgments and that the changes which would be made in Arkansas law are highly undesirable. The distinction between intrinsic and extrinsic fraud as a basis for relief from a judgment is considered an important and desirable one.

2. This rule would make the same provision for relatively unlimited control of judgments by circuit courts as that made for chancery courts by Ark. Stat. Ann. 22-406.1 et seq. (Repl. 1962). This makes for uniformity not only as between the two courts but also as among judgments in a particular court, regardless of the time elapsed between entry of the judgment and expiration of a term of court.

3. Under prior Arkansas law, the trial court lost jurisdiction to set aside or modify a judgment

after term time except on those grounds specified in superseded Ark. Stat. Ann. 29-506 (Repl. 1962). *Davis v. McBride*, 247 Ark. 895, 448 S.W.2d 37 (1969); *Hardin v. Hardin*, 237 Ark. 237, 372 S.W.2d 260 (1973). Under prior Arkansas law, the trial court had the power to correct, in certain instances, its judgment even after an appeal had been docketed in the Arkansas Supreme Court. Superseded Ark. Stat. Ann. 27-2129.1 (Repl. 1962). Under this rule, however, once the appeal is docketed, a change can be made only with leave of the Supreme Court.

4. In subsection (c)(1) the one year limitation follows the recommendation of the Committee in its proposed Rule 60.

5. Subsection (k) follows Section (b) of FRCP 60 by permitting a court to entertain an independent action to relieve a party from a judgment. *Bankers Mortgage Co. v. United States*, 423 F. 2d 73 (C.C.A. 5th, 1970), cert. den., 90 S.Ct. 2242. Arkansas has previously recognized the power of an equity court to review a judgment from a court of law, although such power is severely limited. *Cotton v. Hamblin*, 233 Ark. 65, 342 S.W.2d 478 (1961).

6. Section (k) provides for the abolition of writs of error and bills of review. While these have not been common under prior Arkansas law, they have been permitted under Article 7, Section 4, of the Arkansas Constitution. However, any relief which could be granted by a court of equity under a bill of review can also be afforded under this rule; hence, it should have little effect on Arkansas practice and procedure.

Additions to Reporter's Notes, 1984 Amendments: - Rule 60(b) is modified to remove the references to the law prior to January 1, 1970, and to replace it with language from cases describing the broad power of a court to modify or set aside its judgment during the term of court in which it was entered. See, *Karoley v. A.R. & T. Electronics*, 235 Ark. 609, 363 S.W.2d 120 (1962), and the cases cited in that opinion.

-Rule 60(c)(5) is amended to remove "married women" from the classes of persons to which the Rule applies.

The caption of the Rule is amended to include "Modification."

Addition to Reporter's Note, 1990 Amendment. - Rule 60 has been amended to eliminate any overlap with Rule 55. Under former subdivision (c)(7) of Rule 60, a trial court could set aside a judgment "[f]or unavoidable casualty or misfortune preventing the party from appearing or defending." The 1990 amendment deletes this provision, which has been cited in default judgment cases. E.g., *McGee v. Wilson*, 275 Ark. 466, 631 S.W.2d 292 (1982). Moreover, the new opening language of paragraph (c) specifically states that Rule 60 does not apply to default judgments, "which may be set aside in accordance with Rule 55(c)."

Addition to Reporter's Notes, 2000 Amendment: - Subdivisions (a) and (b) of the rule have been revised in response to case law. In addition, subdivision (c) has been amended by changing the cross-reference in paragraph (1) from Rule 59(c) to Rule 59(b), and by revising paragraph (4).

As originally adopted, subdivision (a) provided that the trial court could "at any time" correct clerical mistakes and errors "arising from oversight or omission." Under subdivision (b), the trial court could "correct any error or mistake or to prevent the miscarriage of justice" by modifying or setting aside a judgment, decree or order within 90 days of its having been filed

with the clerk. Despite this apparent dichotomy, the Supreme Court held that the 90-day limitation in subdivision (b) also applied to subdivision (a). See, e.g., *Ross v. Southern Farm Bureau Cas. Ins. Co.*, 333 Ark. 227, 968 S.W.2d 622 (1998); *Phillips v. Jacobs*, 305 Ark. 365, 807 S.W.2d 923 (1991). The Supreme Court subsequently held in *Lord v. Mazzanti*, 335 Ark. 25, 2 S.W.3d 76 (1999), that "clerical mistakes" under subdivision (a) can be corrected at any time, and overruled any language to the contrary in *Phillips* and *Ross*.

This amendment is consistent with *Lord v. Mazzanti*, *supra*. As amended, subdivision (a) is a slightly modified version of former subdivision (b). It states the general rule that the court may, with prior notice to all parties, modify a judgment, decree or order within 90 days of its filing with the clerk to "correct errors or mistakes or to prevent the miscarriage of justice." Revised subdivision (b) expressly states an exception for "clerical mistakes" and errors "arising from oversight or omission," which may be corrected at any time with prior notice to all parties.

Amended paragraph (4) of subdivision (c) allows a judgment, decree or order to be modified or set aside "[f]or misrepresentation or fraud (whether heretofore denominated intrinsic or extrinsic) by an adverse party." This language, taken in part from Rule 60(b)(3) of the Federal Rules of Civil Procedure, eliminates the distinction between intrinsic and extrinsic fraud, a distinction that has been described as "shadowy, uncertain, and somewhat arbitrary." *Howard v. Scott*, 125 S.W. 1158, 1166 (Mo. 1909). See also C. Wright & A. Miller, *Federal Practice & Procedure* 2861 (1995) (distinction is "very troublesome and unsound").

Under the prior rule, only extrinsic fraud was a ground for setting aside or modifying a judgment. This has resulted in unfairness. See, e.g., *Ward v. McCord*, 61 Ark. App. 271, 966 S.W.2d 925 (1998) (husband's concealment of bank account from wife during negotiations leading to property settlement in divorce action was not extrinsic fraud); *Office of Child Support Enforcement v. Mitchell*, 61 Ark. App. 54, 964 S.W.2d 218 (1998) (mother's failure to mention in affidavit filed in paternity case that a man other than defendant could have been the father of her child was not extrinsic fraud); *Office of Child Support Enforcement v. Offutt*, 61 Ark. App. 207, 966 S.W.2d 275 (1998) (conduct of attorney in preparing precedent containing findings not made by the court and mailing it to the judge with a letter requesting that he sign the order if no objection was received from opposing counsel did not constitute extrinsic fraud).

Addition to Reporter's Notes, 2001 Amendment: - The references to "trial court" in subdivisions (h) and (i) have been replaced with "circuit court." Constitutional Amendment 80 established the circuit courts as the "trial courts of original jurisdiction" in the state and abolished the separate chancery and probate courts.

History Text:

History. Amended July 9, 1984, effective September 1, 1984; amended December 10, 1990, effective February 1, 1991; amended January 27, 2000; amended May 24, 2001, effective July 1, 2001

Associated Court Rules:

Rules of Civil Procedure

Group Title:

VII. Judgment

Source URL: <https://courts.arkansas.gov/rules-and-administrative-orders/court-rules/rule-60-relief-judgment-decree-or-order>